

Remarks

In response to the restriction requirement of June 18, 2008, applicants submit the following response.

Claims have been amended, claims have been canceled and new claims are presented herein. The following table directs the Office to support of these amendments/ claim additions.

Table of Support for Claim Amendments and New Claims

*Note: Paragraph Numbers refer to those of the published version of the application (U.S. Publ. No. 2007/0178469).

| CLAIM(S) | SUPPORT |
|------------|--|
| 23 | Amended to change dependency from a canceled claim. |
| 24 | Amended only to add the "degree" symbol. |
| 34 | Amended only to correct typographical error. |
| 42, 44 | Paragraphs [0039]-[0052] and [0114], Example 6 |
| 48 | Paragraphs [0039] and [0139]-[0142] |
| 51, 55 | Paragraphs [0039]-[0052] and [139]-[0142] |
| 63, 64 | Paragraphs [0091]-[0102] |
| 65 | Original claims 1 and 2, Example 16, Figure 19, Paragraphs [105]-[106] |
| 66 | Original claim 3, Paragraphs [105]-[106] |
| 67, 68 | Sequence Listing, Paragraphs [105]-[106] |
| 69 | Original claim 4, see also paragraphs [0039]-[0052] |
| 70 | Original claim 7 |
| 71, | Original claim 8 |
| 72,73 | Original claim 41, see also paragraphs [0039]-[0052] |
| 74-84 | Paragraphs [0105]-0159], see also, e.g., original claim 47 |
| 85, 86, 90 | Original claim 57, para. [0139]-0146] and [0180]-0182], see also para. [0039]-[0052] |
| 87 | Paragraph [0066] |
| 88,89 | Paragraphs [0161]-[0165] |
| 91 | Original claim 58 |
| 92 | Original claim 59 |
| 93-96 | Paragraphs [0190]-[0196] and Example 17, see also para. [0039]-[0052] |

| CLAIM(S) | SUPPORT |
|----------|---|
| 97, 98 | Paragraphs [0161]-[0165] |
| 99,100 | Paragraph [0196] |
| 101-104 | Paragraphs [0085]-[0108], see also para. [0039]-[0052] |
| 105-107 | Originals claims 12 and 14, para. [0050]-[0051], see also para. [0044] and [0049] |
| 108 | Paragraph [0103] |
| 109 | Paragraphs [0039] and [0139]-[0159] |
| 110 | Paragraph [0164] |
| 111 | Paragraph [0076] |
| 112 | Original claim 3, Paragraph [0106] |
| 113, 114 | Sequence Listing, Paragraphs [105]-[106] |
| 115 | Paragraphs [0123]-[0124] |

Applicants provisionally elect, with traverse, Group I drawn to and isolated DNA sequence comprising a) at least one bent DNA element, and b) at least one binding site for a DNA binding protein, a MAR sequence; and a cell comprising this sequence. The Office identified previously pending claims 1 to 4, 7 to 8, 10, 12 to 14, 41 and 57 to 59 as belonging to this group. Claims 1 to 14 and 41 and 57 to 59 have been canceled. New claims 65 to 115 have been introduced. Applicants submit that new claims 65 to 92 and new claims 101 to 107 and 111 to 115 read on Group I. As a species, applicants provisionally elect, with traverse, SEQ ID No. 25. Claims 65 to 67, 69 to 72, 74 to 92, 101 to 103, 105 to 107 and 111 to 115 read on the provisionally elected species. Applicants would like to suggest the following SEQ ID No. to be search subsequent to the elected species: SEQ ID No. 26, SEQ ID No. 27 and SEQ ID No. 24.

Applicants would like to traverse the restriction requirement/election of species as follows:

Groups I and III:

The Office expressed the opinion that the inventions listed in groups I to III do not relate to a single general inventive concept because they lack the same or corresponding special technical feature. In support, the Office cited Kries et al. (NAR, Vol. 18, No. 13, pages 3881-85 (1990)- hereinafter "Kries"). Applicants traverses the restriction requirement with regard to groups I and III.

Kries discloses sequences of chicken lysozyme 5' MAR. Applicants have clarified in all groups I claims and in group III claims 42 to 45 and 55 and 93 to 100 the nature of at least one MAR element and/or its relationship to cLysMAR. In view of this clarified technical feature, applicants respectfully request reconsideration of the restriction requirement.

On page 3, the Office noted that claims 4, 41, 42, 44, 51 and 55 are claimed in Markush-type format (Compare in particular new claims 69, 72, 80, 82, 90, 103 and 106). While the Office acknowledged that each sequence in this group is AT-rich, the specific order of As and Ts does not appear to be conserved. The Office required election of one of the members of the group. The Office noted that upon indication of allowability of the generic claim(s), the restriction requirement between the sequences shall be withdrawn and any claim(s) depending from or otherwise requiring all limitation of the allowable linking claim(s) will be rejoined and fully examined for patentability.

The Office referred to Sections (f)(i)(A) (property or activity) and Section(f)(i)(B)(1) (structure) of Annex B of the of the PCT Administrative Instruction (Please also see Section (f)(i)(B)(2) as an alternative for Section(f)(i)(B)(1)).

Applicants note that the sequences share the activity of increasing protein production and, as noted by the Office, feature a high A and T content, a structural element recognized in the art for MAR sequences.

Applicants also note that the words "significant structural element is shared by all of the alternatives" in Section(f)(i)(B)(1) refer to cases where the compounds share a common chemical structure which occupies a large portion of their structures, or in case the compounds have in common only a small portion of their structures, the commonly shared structure constitutes a structurally distinctive portion in view of existing prior art, and the common structure is essential to the common property or activity.

Applicants note that there is no indication, especially when the common chemical structure occupies a large portion, that the Administrative Instructions require a common core sequence as set forth by in the Office Action.

For SEQ ID No. 25, 26 and 27, but also 24, applicants would also like to direct the Office's attention to Example 6, and even more in particular Table 6 and the explanations directly

preceeding this table.

In view of the above, reconsideration of the restriction requirement is respectfully requested.

The Commissioner is authorized to charge fee deficiencies and overpayment in connection with this filing to undersign's deposit account 50-3135.

Respectfully submitted,

/Joyce v. Natzmer/

By : Joyce von Natzmer
Registration No. 48,120
Customer No. 46002
Direct Telephone: (301) 657-1282

Monday, October 20, 2008